

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Harriet Gray

Debtor

Case No.09-14445-RGM
Chapter 13

RESPONSE TO OBJECTION TO CONFIRMAION

COMES THE DEBTOR and in response to the chapter 13 trustee's objection to confirmation of plan filed in this cause states:

The trustee objects to the modified plan filed October 21, 2010 on grounds the plan is infeasible in violation of §1325(a)(6) stating the debtor is unemployed.

Debtor concurs that she is unemployed after being laid off from a position she held for a decade in August 2010. The plan calls for submission of all the debtor's excess income received from her unemployment compensation along with contributions from third parties and/or liquidation of exempt assets to fund the plan. The modified plan does not violate the liquidation test or any other provisions of §1325.

It is implied in the plan and it is reasonably foreseeable that debtor will obtain employment sufficient to equal the unemployment and contribution funding sources of the current plan. If debtor fails to obtain such employment the plan will default whereupon the appropriate trustee response is a motion to dismiss.

If the debtor obtains employment paying in excess of the current funding then she will have an obligation to modify the plan due to a substantial change of circumstances.

Unemployment compensation is provided to assist citizens of the Commonwealth when income is lost 'without cause' to pay their obligations until such time as further

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employment is secured. Debtor is required to diligently seek employment in order to receive the income assistance and debtor is acting accordingly.

Debtor's plan, in all other respects, conforms to the statutory requirements and is providing creditors an admittedly small but nevertheless real dividend. Additionally the interest of the creditors are better served by allowing the debtor to remain in a confirmed plan as long as the minimum statutory requirements are being met, to afford them the benefit of a very reasonably anticipated positive change of circumstances.

The trustee has asserted and this Court has found that the §1325(b)(4) 'applicable commitment period' provisions are temporal and that an above median debtor must remain in a plan for 60 months to permit, among other reasons, a debtor's creditors to benefit from a change in circumstances during the course of the plan that might provide them a higher dividend than that required by the Form 22 Means Test.

At present unemployment benefits are available for a period up to 86 weeks or approximately 22 months. The debtor has been before the court for approximately 18 months. The plan as modified therefore provides for payment and distribution to creditors for at least 40 of the 60 months required and incorporates a reasonable likelihood she will obtain employment that at least replaces the current sources during the plan. Such likelihood is reasonably foreseeable renders the plan feasible.

The debtor should have a concomitant benefit to creditors §1325(b)(4) commitment period benefit when circumstances change to her detriment. That is, she should be permitted to remain in a conforming, confirmed plan for as long as is possible upon a negative change to allow for the reasonably foreseeable possibility, if not probability, of its reversal.

WHEREFORE debtor prays that the objection be overruled, that the plan be confirmed.

Respectfully submitted

Harriet Gray
By Counsel

By: /s/Harrison Darden Hutson
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Certificate of Service

I hereby certify that true copies of the foregoing Response to Objection to Plan were mailed postage pre paid this November 29, 2010 to:

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/s/HD Hutson